IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9635 of 2006

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALPESHKUMAR BABUBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR MUKESH H RATHOD for Petitioner(s) : 1,
MR SP HASURKAR, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 15/02/2007

ORAL JUDGMENT

Heard the learned advocates.

RULE returnable today. Mr.Hasurkar waives service of rule. With the consent of the learned

advocates, the petition is heard and disposed of today.

The petitioner, a Government servant appointed on compassionate grounds, challenges the Notification dated 19th April, 2006 issued by the Sardar Patel Institute of Public Administration, Gujarat State (hereinafter referred to as, **"the SPIPA"**) and the apprehended order of termination of service of the petitioner.

By order dated 2nd November, 2001 made by the Superintending Engineer, R & B Circle, Ahmedabad, the petitioner was appointed as a Clerk in Class-III service of the State Government on compassionate grounds on the terms and conditions mentioned therein. Since his appointment as a Clerk, under the Gujarat Non-Secretariat Clerks, and Clerk-cum-Typists (Training and Examination) Rules, 2001 framed under Article 309 of the Constitution of India, the petitioner was required to take the pre-service training and pass the post-training examination. Accordingly, the petitioner took the said training

given by the SPIPA. However, he failed to pass the post-training examination within the specified chances. It appears that the last of the said chances was availed of by the petitioner in the month of October, 2005. The result thereof was declared by the SPIPA under the impugned Notification dated 19th April, 2006. Under the said Notification, the concerned heads of the department were instructed to discharge the examinees from service who had failed to pass the said examination at the last available chance. Undoubtedly, the petitioner is one of such examinees who had availed of the last chance and had failed at the said examination. It is pertinent to note that the petitioner does not challenge the result declared by the SPIPA where the petitioner has been declared to have failed nor the appointing authority has discharged the petitioner from service. It is mere apprehension of his discharge from service which has brought the petitioner before this Court. As such, the petition is premature and is not maintainable. Nevertheless, the petition is heard and decided on merits.

Mr.Rathod has submitted that the petitioner, having been appointed on compassionate grounds, is not required to undergo any training nor he is required to pass the post-training examination. Under the terms and conditions of his appointment also he was not required to pass such examination. The petitioner's service, therefore, cannot be terminated for his failure to pass the post-training examination. In support thereof, he has relied upon the judgment of this Court in the matter of **Kokilaben Harshadrai Pancholi v/s. Development Commissioner and others** [1998(2) GCD 1058 (Guj)] particularly paragraph 9 thereof. He has submitted that the said judgment has been confirmed by the Division Bench in Letters Patent Appeal No.70/1998 by order dated 30th November, 2004.

He has also submitted that other similar matters have been entertained by this Court and the concerned petitioners have been protected by interim relief. In view of the diverse opinions, one of such matters has been referred to the Larger Bench by order dated 20th February, 2006 made by the learned Single Judge

(Coram: Jayant Patel, J.) in Civil Application No.1790/2006. As the matter is at large before the Larger Bench, this petition should be entertained and ad-interim relief should be continued.

The petition is contested by Mr.Hasurkar. Mr.Hasurkar has submitted that the matter at issue is no more *res integra*. The matter has been decided by this Court earlier as far back as in the year 1996 and is followed time and again. The orders of the learned Single Judge have been confirmed by the Division Bench. The judgment in the matter of Kokilaben (supra) has been held to be *per incurium* in Special Civil Application No.21363/2005. The order made on Special Civil Application No.21363/2005 has been confirmed by the Division Bench by its order dated 20th November, 2006 made in Letters Patent Appeal No.476/2006. Mr.Hasurkar has relied upon the judgment of the learned Single Judge in the matter of **Bharatkumar Shivabhai Jadav v/s. Deputy District Development Officer, Kheda and others** [1996(2) GLH 646].

The question is whether a Government servant appointed as a Clerk or Clerk-cum-Typist on compassionate grounds should be required to undergo per-service training and pass post-training examination and whether on his failure to pass the post-training examination within the specified chances can he be discharged from service.

In the matter of Kokilaben Harshadrai Pancholi (supra), the learned Single Judge held that, **"...Appointment of the petitioner, which was made on compassionate ground, is not made under the said service rules, but it has been made under Government Resolution. So specifically those rules were not made applicable to this category of employees. Even if there is some resolution of the Government which provides for passing of the examination by these persons, then it cannot be said to be reasonable and justified."** The said judgment was challenged before the Division Bench in Letters Patent Appeal No.70/1998. The Bench (Coram: B.J.Shethna and Sharad D.Dave, JJ.) by its order dated 30th November, 2004 observed that, **"...By now, the respondent-original**

petitioner has put on 24 years of service. Having regard to the facts and circumstances of the case, it would be a mockery of justice, if this Court interferes with such just and reasoned order passed by the learned Single Judge in favour of the respondent-petitioner in a petition filed by her." Thus, it is apparent that the said Division Bench did not address on the real matter at issue.

In fact, the matters at issue have been put at rest long back. In the matter of Bharatkumar Shivabhai Jadav (supra), identical issue was under consideration before the learned Single Judge. The learned Single Judge considered the scheme for employment on compassionate grounds, the rules governing the recruitment to the posts of Clerk or Clerk-cum-Typist, the above referred Examination Rules, the statutory nature of the said rules and the identical issue answered by several Benches earlier in Special Civil Applications Nos.6646/1995, 7067/1995, 2791/1994 and 3754/1986. The learned Judge held that, **"...Therefore, if the Government has issued a circular requiring the adhoc services of the**

candidates who have failed to clear the examination in the specified chances, it cannot be said that any arbitrary or illegal action is taken in the matter." It has been further held that, **"...Under the scheme for giving compassionate appointments, there is a clause which clearly provides that no concession such as exemption from Pre-service Departmental Examination or in service Departmental Examination or any other concession in service matter shall be granted to the compassionate appointees. Therefore the petitioners cannot claim to continue in service after having failed to clear the examination in the prescribed chances, nor can they claim any exemption from the provisions of the Rules which empower the Government to terminate their service on their failure to clear the examination as required by the Rules in specified chances."** This view of the learned Single Judge has been confirmed by the Division Bench (Coram: B.C.Patel, J. as he then was, and M.S.Shah, J.) by order dated 15th October, 1998 made on Letters Patent Appeal No.788/1996. The judgment in the matter of Kokilaben Harshadrai Pancholi (supra) particularly the observation reproduced hereinabove was considered

by me in the matter of **Ashokbhai Ramubhai Patel v/s. Panchayat and Urban Housing and Urban Development Department and another** [Special Civil Application No.21363 of 2005 decided on 21st October, 2005]. Considering the above referred judgments, I had held that, **"...The aforesaid judgment was not brought to the notice of the Bench in the matter of Kokilaben Harshadrai Pancholi (supra). The aforesaid judgment in the matter of Bharatkumar Shivabhai Jadav being earlier, shall hold the field. The judgment in the matter of Kokilaben Harshadrai Pancholi (supra) is *per incurium* the judgment in the matter of Bharatkumar Shivabhai Jadav (supra)."** The said view has now been confirmed by the Division Bench in the above referred Letters Patent Appeal No.476/2006.

While considering the identical issues, in the matter of **Mrs.Vibha Vijay Orpadkar** (Special Civil Application No.9784/1993, decided on 10th November, 1993), this Court (Coram: K.G.Shah, J.) observed that, **"...I do not think that there is any exception that could be taken in favour of the petitioner on the ground that she has been appointed on a**

compassionate ground. Once she enters service she has to pass the pre service training examination as required by the rules and if she fails to pass that examination within the specified chances, the consequences as stipulated in the rules and the concerned Government Resolutions and circulars would certainly follow. That the petitioner has been appointed on a compassionate ground would be no ground for treating her differently as compared to others, who have entered service on a regular line."

Thus, the matters at issue in this petition have been finally decided by the Division Bench of this Court as far back as on 15th October, 1998 in Letters Patent Appeal No.788/1996 and has been repeatedly followed by the Benches, Single Judge as well as Division Bench.

The upshot of all these judgments is one and singular that once a person enters the Government service, may be on compassionate ground, such person would be governed by the rules and regulations and other conditions of service governing the service of

the Government servants appointed through the regular recruitment procedure. Hence, in my view, the present petitioner also cannot be an exception to the aforesaid universal proposition of law.

In above view of the matter, the present petition does not require to be entertained even though some other petitions are entertained and are pending final hearing or that the same issue has been referred to the Division Bench as recorded hereinabove.

Mr.Rathod has relied upon the Government Resolution dated 19th November, 1997. He has submitted that a special concession has been made by the State Government for the widows of the deceased Government servants who are appointed on compassionate grounds and who fail to pass the post-training examination within the specified chances. A similar treatment, therefore, is required to be made in respect of the petitioner who is the son of the deceased Government servant and has been appointed on compassionate ground.

I am unable to accept this contention. Though the State Government has, in its wisdom, made special concession in respect of the widows appointed on compassionate grounds, a similar concession has not been made in connection with the children of the deceased Government servants appointed on compassionate grounds. The concession granted to the widows cannot be extended to such children appointed on compassionate grounds as a matter of course.

Mr.Hasurkar has relied upon the revised scheme for compassionate employment made under Government Resolution dated 10th March, 2000. Paragraph 15(A) of the said Resolution specifically provides that once an appointment is made on compassionate ground such employee is put at par with other Government employees and would be governed by all the rules and regulations governing the service conditions of the Government servants. The rules in connection with the recruitment, recruitment examination, pre-service training, post-training examination and other rules and rules for departmental examination would be

binding to such employees. It should be noted that similar was the provision in the earlier scheme considered by this Court in the matter of Bharatkumar Shivabhai Jadav (supra). Even otherwise, whether it is made a specific condition of employment or not, once in Government service, irrespective of the appointment made on compassionate grounds, such servant would be governed by all rules and regulations which govern the service conditions of the Government servants.

I am of the opinion that the petitioner's claim for special consideration on the ground that he was appointed on compassionate ground is illegal and wholly unjustified. Such a claim cannot be accepted particularly in view of the settled law as discussed hereinabove.

At last, Mr.Rathod has submitted that the petitioner be given one more chance to take the post-training examination. He, however, admits that the petitioner has not applied for such additional chance. In absence of a formal application made by

the petitioner the prayer cannot be granted. However, it is clarified that if it is permissible under the relevant rules the petitioner may apply for an additional chance to take the post-training examination. If such application is made, the same be considered in accordance with law.

The petition is dismissed. Rule is discharged. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

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